

## **CHAPTER 32-13**

### **ACTIONS IN PLACE OF SCIRE FACIAS AND QUO WARRANTO**

**32-13-01. Remedies obtainable by action instead of writ.** The remedies formerly attainable by the writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto may be obtained by civil action in the district court under the provisions of this chapter.

**32-13-02. Who plaintiff.** When an action under this chapter is prosecuted by the attorney general, the state of North Dakota shall be plaintiff. When it is prosecuted by a private person, such person shall be the plaintiff therein and the proceedings in such action shall be the same as in an action by a private person, except as otherwise specially provided.

**32-13-03. Who may bring action against usurping officer.** An action may be commenced by the state, or any person who has a special interest in the action, against the parties offending in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office in a corporation or limited liability company created by the authority of this state.
2. When any public officer, civil or military, shall have done or suffered an act which by the provisions of law shall make a forfeiture of the officer's office.
3. When any association or number of persons shall act within this state as a corporation without being duly incorporated or as a limited liability company without being duly organized.

**32-13-04. Security for costs from private party.** Before commencing an action under this chapter at the request of a party having an interest therein, the attorney general may require as a condition of commencing the same that satisfactory security be given to indemnify the state against costs and expenses which may be incurred therein.

**32-13-05. Complaint for usurping office - Arrest of defendant.** The complaint in an action commenced against a person for usurping an office in addition to the statement of the claim for relief also may set forth the name of the person rightfully entitled to the office with a statement of that person's right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of the defendant's usurpation thereof, an order may be granted by the judge of the court for the arrest of such defendant.

**32-13-06. What judgment shall include.** In every action against a person for usurping an office, judgment shall be rendered upon the right of the defendant and also upon the right of the person alleged to be entitled to the office or only upon the right of the defendant, as justice shall require.

**32-13-07. When claimant takes office.** If judgment is rendered upon the right of the person alleged to be entitled to the office and the same is in favor of such person, that person shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to begin the execution of the office, and it shall be that person's duty immediately thereafter to demand of the defendant in the action all the books and papers in the defendant's custody or within the defendant's power, belonging to the office from which the defendant shall have been excluded.

**32-13-08. Refusal to deliver - Punishment.** If the defendant refuses or neglects to deliver any of the books or papers demanded, as prescribed in section 32-13-07, the defendant is guilty of a class B misdemeanor, and the court, or a judge thereof, by order, may put the person entitled to the office in possession thereof and of all the books and papers belonging

thereto, and any party refusing to deliver the same, when ordered as aforesaid, shall be punished as for a contempt.

**32-13-09. Damages for usurpation.** If judgment is rendered upon the right of the person alleged to be entitled to the office in favor of such person, that person may recover by action the damages which that person shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

**32-13-10. Joinder of several claimants.** When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

**32-13-11. Judgment against intruder.** When a defendant against whom an action shall have been commenced shall be adjudged guilty of usurping, intruding into, or unlawfully holding or exercising any office, franchise, or privilege, judgment shall be rendered that the defendant be excluded from such office, franchise, or privilege and also that the plaintiff recover costs against the defendant.